

EXHIBIT VII

Response to Public Comments on Draft 2009 FTIP

STATE OF CALIFORNIA

2008/09 – 2011/12 Federal Statewide Transportation Improvement Program

RESPONSE TO PUBLIC COMMENTS ON THE DRAFT 2009 FSTIP

Comment 1

Comment submitted by Sookyung Kim, San Diego Association of Governments via email

I noticed that our Board approval date is incorrect in your draft report and the link doesn't seem to work. The correct Board adoption for SANDAG is July 25, 2008 (not July 17, 2008). The link is www.sandag.org/2008RTIP.

Response

The adoption date and web link were corrected.

Comment 2

Comment submitted by Ken Ross, City of Livermore via email

Is there an "easy" way to view the FSTIP? The website download takes 20 minutes or more.

Response

The document was changed on our website so that the DRAFT 2009 FSTIP could be downloaded in its entirety or viewed by sections. We will continue with this format on our website for the finalized version of the document.

Comment 3

Comment submitted by Jerome Wiggins, FTA via email.

I have concerns relative the financial constraint of the FSTIP in particular SACOG.

REG 15053 south line extension (*South Sacramento Light Rail, Phase 2*)

I would like to discuss in particular the inclusion of TCRP funds in the FSTIP by Caltrans statewide and its potential impact on the CA FSTIP.

Response

Caltrans contacted Sacramento Area Council of Governments (SACOG) regarding this issue. SACOG is in agreement with us and will move the funding from year 1 and 2 to year 3 and 4 in their adopted 2009 FTIP through their first amendment. FTA was advised of the proposed resolution and concurred with the agreement.

Comment 4

Comment submitted by Diane Bynum, Tuolumne County via email

Just so you know, we are wanting to program the Fiscal Year 2008/2009 Foothill Commuter Services Project (\$21, 0000) not 07/08, which is already programmed (attached). I do not see this programming in the draft 2009 FSTIP document that is currently out for review/comment.

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Also, the Public Works vehicles are included in the Draft FSTIP document. As you know, we have not programmed those projects yet as we will be conducting a Call for Projects as soon as we hear more from FHWA on what vehicles and/or vehicles parts qualify for CMAQ. I believe our last correspondence on that was mid-August and we were going to receive more clarification from FHWA. Is that right?

Response

The Foothill Commuter Services project will be included in the first amendment to the rural non-MPO portion of the 2009 FSTIP.

The 4 CMAQ projects currently included in the 2009 Draft FSTIP were removed from the financial summary at the time of release. However, the individual project listings were still included. Those projects have been deleted from the 2009 FSTIP.

Comment 5

Comment from Adriano L. Martinez, Attorney for Natural Resources Defense Council (NRDC) on behalf of the NRDC, the Coalition for a Safe Environment, East Yard Communities for Environmental Justice, and the Endangered Habitats League (letter)

We enclosed a copy of the NRDC letter along with our response in the following pages. The above referenced groups “filed a petition for review in the United States Court of Appeals for the Ninth Circuit challenging the Environmental Protection Agency (EPA) adequacy determination for the most recently submitted Motor Vehicle Emissions Budgets (MVEB) for PM2.5 for the South Coast Air Basin.” Caltrans was asked to “delay its decision” to include the Southern California Association of Governments RTIP/FTIP in the FSTIP until there are adequate budgets that addresses the issues raised.”

Response

Caltrans responded by letter on September 26, 2008 to Mr. Adriano L. Martinez, NRDC, (copy enclosed) declining their request. The letter states that “although EPA is seriously considering your position in support of the litigation filed by your clients, it has taken no action to suspend or reverse its initial sufficiency finding for the referenced emissions budget. Absent such an action invalidating the budget approval, by EPA or the court in the pending litigation, Caltrans must assume that the budget is valid.” Accordingly, we will include SCAG’s FTIP in our FSTIP, and we will submit the FSTIP to FHWA and FTA in a timely manner.”

Comment 6

Comment from Moses Stites, California Public Utilities Commission (letter)

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that projects proposed near rail corridors be planned with the safety of these corridors in mind. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-

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way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

We concur with the 2009 FSTIP objectives and the reference of the State Rail Plan that is to be prepared by Caltrans biennially that includes passenger and rail elements. We are pleased to see that highway-railroad grade separation and crossings improvement are included in the individual lists of programmed projects for many of the 18 MPO's. It is our desire to see more of these rail projects funded in the future.

Response

Comment noted.

September 20, 2008

Attention: Joanne McDermott
Division of Transportation Programming, MS 82
California Department of Transportation
P O Box 942874
Sacramento, CA 94274-0001
Email: joanne.mcdermott@dot.ca.gov

Re: Draft Federal State Transportation Improvement Program

Dear Ms. McDermott:

On behalf of the Natural Resources Defense Council, the Coalition for a Safe Environment, East Yard Communities for Environmental Justice, and the Endangered Habitats League, we submit these comments related to the Draft Federal State Transportation Improvement Program ("FSTIP"). The California Department of Transportation ("CALTRANS") may or may not be aware that the groups mentioned above filed a petition for review in the United States Court of Appeals for the Ninth Circuit challenging the Environmental Protection Agency's ("EPA") adequacy determination for the most recently submitted Motor Vehicle Emissions Budgets for PM_{2.5} for the South Coast Air Basin. Given that this petition challenging the legal validity of the conformity budgets greatly impacts your determination whether the Regional Transportation Improvement Program ("RTIP")¹ created by the Southern California Association of Governments ("SCAG") complies with federal law, we respectfully request that CALTRANS use this letter and the attachments that elaborate the inadequacy of these budgets in determining whether to include SCAG's RTIP/FTIP in the FSTIP.

Accordingly, we are providing the following documents to be used in CALTRANS' evaluation of whether the FSTIP can be submitted to the federal government for approval in its current fashion with SCAG's RTIP/FTIP included in this submissions:

- 1) Attachment A—Letter Submitted to EPA by Commenters and other environmental groups related to the PM_{2.5} conformity budgets (with select attachments);
- 2) Attachment B—Court-stamped petition for review of EPA's adequacy determination filed in the United States Court of Appeals for the Ninth Circuit;
- 3) Attachment C—Stay request Submitted to EPA to stay the effectiveness of its adequacy determination pending court resolution of this matter; and
- 4) Attachment D—Letter from Regional Administrator Nastri noting EPA's consideration of our request.

¹ Our use of the term RTIP also includes SCAG's Federal Transportation Improvement Program ("FTIP").

Ms. Joanne McDermott
September 20, 2008
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Because Petitioners have shown that the motor vehicle emissions budgets for the South Coast Air Basin are inadequate under the mandates of the Clean Air Act, SCAG's RTIP/FTIP, which relies on these emissions budgets, also does not comply with legal mandates. Thus, CALTRANS should not include SCAG's RTIP/FTIP in the upcoming FSTIP that it plans to submit to the federal government for approval. Moreover, Commenters requested that EPA the effectiveness of its adequacy determination pending the Ninth Circuit's resolution of this matter. EPA is currently giving our stay request "serious consideration," so it would be premature for CALTRANS to make a determination on SCAG's RTIP/FTIP before EPA makes its decision on whether to grant or deny Commenters stay request.

Finally, although it will be outside of the comment period, on Monday, Petitioners will submit to CALTRANS the merits brief that will be filed in the United States Court of Appeal for the Ninth Circuit. This will help your agency understand in more depth the legal issues related to Commenters petition for review.

In summary, we ask that CALTRANS delay its decision to include the SCAG RTIP/FTIP in the FSTIP until there are adequate budgets that address the issues raised in Commenters' petition for review. Please do not hesitate to contact me if you have any questions.

Sincerely,



Adriano L. Martinez
Project Attorney
Natural Resources Defense Council
(310) 434-2300

Counsel for Petitioners in *NRDC et al. v. EPA*, Case No. 08-72288 (9th Cir. May 29, 2008).

[Enclosures]

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION PROGRAMMING
1120 N STREET M.S.82
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*Flex your power!
Be energy efficient!*

September 26, 2008

Adriano L. Martinez
Project Attorney
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401

Attention: Adriano Martinez

Dear Mr. Martinez:

The California Department of Transportation (Caltrans) has received and is reviewing your submitted comments on the behalf of the Natural Resources Defense Council, East Yard Communities for Environmental Justice, Coalition for a Safe Environment, and the Endangered Habitats League on the Draft 2009 Federal Statewide Transportation Improvement Program (FSTIP). You have advised that the above-referenced organizations have filed litigation to invalidate the emissions budget for the South Coast Air Basin. That emissions budget has been preliminarily approved by the Environmental Protection Agency (EPA), and that budget supports the conformity determinations and programming efforts of the Southern California Association of Governments (SCAG). Those efforts are reflected in SCAG's 2008 Federal Transportation Improvement Program (FTIP), which Caltrans must incorporate in its FSTIP. (*See* 23 United States Code section 135[g].) Because of the pending litigation, you have asked that Caltrans omit SCAG's FTIP from the FSTIP.

We must respectfully decline your request. Although EPA is seriously considering your position in support of the litigation filed by your clients, it has taken no action to suspend or reverse its initial sufficiency finding for the referenced emissions budget. Absent such an action invalidating the budget approval, by EPA or the court in the pending litigation, Caltrans must assume that the budget is valid. Accordingly, we will include SCAG's FTIP in our FSTIP, and we will submit the FSTIP to the Federal Highway Administration in a timely manner.

Adriano L. Martinez
Project Attorney
Natural Resources Defense Council
September 26, 2008
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We wish to stress that our response to your request is governed by our view of Caltrans' legal obligations, and should not be interpreted as a reflection on the merits of your arguments. Those arguments, of course, will be addressed by the court in the pending litigation.

Sincerely,


JOANNE HUTTON MC DERMOTT, Senior Transportation Planner
Office of Federal Transportation Management Program

c: Heather E. Gange, U.S. Department of Justice

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 19, 2008

Joanne McDermontt
California department of Transportation
P.O.Box 942873
Sacramento, CA 94273-0001

Re: Draft 2009 Federal Statewide Transportation Improvement Program (FSTIP)
SCH# 2008081121

Dear Ms. McDermontt:

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that projects proposed near rail corridors be planned with the safety of these corridors in mind. In addition, projects may increase pedestrian traffic at crossings, and elsewhere along rail corridor rights-of-way. Working with CPUC staff early in project planning will help project proponents, agency staff, and other reviewers to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

We concur with the 2009 FSTIP objectives and the reference of the State Rail Plan that is to be prepared by Caltrans biennially that includes passenger and rail elements. We are pleased to see that highway-railroad grade separation and crossings improvement are included in the individual lists of programmed projects for many of the 18 MPO's. It is our desire to see more of these rail projects funded in the future.

Thank you for your consideration of these comments. If you have any questions on this matter, please call me at (415) 713-0092 or email at ms2@cpuc.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Moses Stites".

Moses Stites
Rail corridor safety specialist
Consumer Protection and Safety Division
Rail transit and crossings Branch
515 L Street, Suite 1119
Sacramento, CA 95814



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA

GOVERNOR'S OFFICE of PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

September 23, 2008

Joanne McDermontt
California Department of Transportation
P.O. Box 942873
Sacramento, CA 94273-0001

Subject: 2009 Federal Statewide Transportation Improvement Plan (FSTIP)
SCH#: 2008081121

Dear Joanne McDermontt:

The State Clearinghouse submitted the above named Other Document to selected state agencies for review. The review period closed on September 20, 2008, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts
Director, State Clearinghouse

**Document Details Report
State Clearinghouse Data Base**

SCH# 2008081121
Project Title 2009 Federal Statewide Transportation Improvement Plan (FSTIP)
Lead Agency Caltrans, Statewide Facilities

Type Oth Other Document

Description The California Federal Statewide Transportation Improvement Program (FSTIP) is a statewide, multi-year, intermodal program of transportation projects, prepared by the California Department of Transportation (Department) in cooperation with the Metropolitan Planning Organizations (MPOs) and the Regional Transportation Planning Agencies (RTPAs). The purpose of the FSTIP is to ensure that federal transportation funding continues to flow into California as a result of complying with federal regulations pertaining to programming.

Lead Agency Contact

Name Joanne McDermontt
Agency California Department of Transportation
Phone (916) 651-7411 **Fax**
email
Address P.O. Box 942873
City Sacramento **State** CA **Zip** 94273-0001

Project Location

County
City
Region
Cross Streets Statewide
Lat / Long
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways
Airports
Railways
Waterways
Schools
Land Use

Project Issues

Reviewing Agencies Regional Water Quality Control Board, Region 1; California Coastal Commission; Department of Conservation; Department of Fish and Game, Headquarters; Cal Fire; Office of Historic Preservation; Department of Parks and Recreation; Central Valley Flood Protection Board; San Francisco Bay Conservation and Development Commission; Department of Water Resources; Office of Emergency Services; California Highway Patrol; Department of Housing and Community Development; Department of General Services; Air Resources Board, Airport Projects; Air Resources Board, Transportation Projects; State Water Resources Control Board, Division of Water Quality; Department of Corrections; California Energy Commission; Native American Heritage Commission; Public Utilities Commission; State Lands Commission; Tahoe Regional Planning Agency

Date Received 08/22/2008 **Start of Review** 08/22/2008 **End of Review** 09/20/2008